No. 88-769

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

JANE HARLAN,

Petitioner,

vs.

THE COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSOCIATION, and its individual members thereof, Michael H. Figenshaw, John J. Greer, James L. Tyler, Karen E. Shaff, Marie Prince-Cohen, D. Carlton Shull, William C. Davison, Norman G. Bastemeyer, Mary Louise Petersen, and Carolyn Sloan, in their individual and official capacities; LARRY JACKSON, Deputy Commissioner of the Iowa Department of Human Services, and GORDON E. ALLEN, Special Assistant Iowa Attorney General, in their individual and official capacities,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

1. Are the federal courts without subject matter jurisdiction to consider the issues raised by Harlan's complaint?

2. Are the members of the Ethics Committee absolutely immune from Harlan's claim for compensatory and punitive damages?

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Iowa State Bar Association Committee on Professional Ethics and Conduct, on behalf of itself and its individual members, respectfully opposes the Petition for Writ of Certiorari to review the opinion and judgment of

the United States Court of Appeals for the Eighth Circuit entered in the above-captioned case on August 12, 1988.

OPINIONS BELOW

Neither the opinion of the Court of Appeals nor the opinion of the District Court has been reported. Both opinions, however, are reproduced in the Appendix to the Petition for Writ of Certiorari.

JURISDICTION

The Petition for Writ of Certiorari invokes this Court's jurisdiction under 28 U.S.C. section 1254.

PROVISIONS OF RULES INVOLVED

Iowa Sup. Ct. R. 118

Rules of the Grievance Commission of the Supreme Court of Iowa

Rules of Procedure of the Committee on Professional Ethics and Conduct of The Iowa State Bar Association

These rules are set forth in the Appendix to this brief.

STATEMENT OF THE CASE

The present controversy must be viewed against the backdrop of the well-defined, extensive, and

unchallenged procedures established by the Iowa Supreme Court for processing complaints of unethical behavior on the part of an attorney. Generally, these procedures, set forth fully in the Appendix to this brief, are first implicated when a complaint is filed with the Iowa State Bar Association Committee on Professional Ethics and Conduct (Ethics Committee or Committee). The Ethics Committee is a duly constituted arm of the Iowa Supreme Court whose members, upon selection, are formally appointed commissioners of that Court. Pursuant to Iowa Supreme Court Rule, the Committee is expressly authorized "to initiate or receive, and process complaints against any attorney licensed to practice law in Iowa for alleged violations of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States or the state of Iowa." Iowa Sup. Ct. R. 118.2.

The Ethics Committee is charged with investigating potential ethical violations, and upon completion of an investigation has several courses of action available to it. Specifically, the Committee may (1) dismiss the complaint, (2) admonish the attorney, or (3) reprimand the attorney. The Committee may also file a formal complaint with the Supreme Court Grievance Commission. Iowa Sup. Ct. R. 118.2.

If the Committee votes to reprimand an attorney, notice of the Committee's action must be given to the attorney through personal service or by restricted certified mail. The attorney must at the same time be notified of his or her right to, within thirty days, file exceptions to the decision of the Ethics Committee. Iowa Sup. Ct. R. 118.3.

The consequences of an attorney's decision with respect to filing exceptions have been clearly articulated by the Iowa Supreme Court. First, if an attorney fails to

file an exception, such failure constitutes a waiver of any further proceedings and establishes the attorney's consent that the reprimand be made final and public. Iowa Sup. Ct. R. 118.3.

By contrast, if an attorney takes timely exception to the Committee's reprimand and the Committee determines that no further action should be taken, the matter is effectively closed and the record is sealed. No finding of unethical behavior will be made public and no disciplinary action will be imposed. Iowa Sup. Ct. R. 118.3.

Finally, if an attorney files a timely exception to the Committee's reprimand and the Committee determines that further action should be taken, a complaint must be filed by the Committee with the Iowa Supreme Court Grievance Commission. Iowa Sup. Ct. R. 118.2. After the complaint is filed, an attorney is entitled to file an answer, to engage in a full range of discovery, to participate in a complete evidentiary hearing, and to file a post-hearing brief addressing all factual and legal issues raised in the disciplinary proceeding. *See* Iowa Sup. Ct. R. 118.5-.9.

The Grievance Commission then issues its decision, after which an attorney has an absolute right of appeal to the Iowa Supreme Court. Iowa Sup. Ct. R. 118.11. Review by the Iowa Supreme Court is de novo, Iowa Sup. Ct. R. 118.11, and may itself be followed by a timely petition for rehearing, Iowa R. App. P. 27. An attorney dissatisfied with the final decision of the Iowa Supreme Court then has the right to seek review of that decision in the United States Supreme Court. 28 U.S.C. § 1257.

It is within the context of this procedural backdrop that the present controversy had its genesis. On January 27, 1987, two Iowa State officials, Larry Jackson and Gordon Allen, filed a complaint with the Ethics Committee challenging the conduct of Iowa attorney Jane Harlan. Jackson and Allen asserted that Harlan had violated various provisions of the Iowa Code of Professional Responsibility when she "pursued extrajudicial remedies in the Governor's office and the court of public opinion by repeatedly requesting assistance with and commenting upon [an ongoing child custody] case with members of the local and national media." Petitioner's Appendix at 24.

The Ethics Committee notified Harlan of the complaint and requested that she respond to it. Harlan did respond, asserting that the complaint was frivolous and represented "an unethical effort to [harass and] silence [Harlan] in violation of her First Amendment rights." Petitioner's Appendix at 26.

Following its investigation, the Ethics Committee concluded some of the charges against Harlan were supported and voted to discipline Harlan by public reprimand. Harlan was promptly notified of the Committee's decision and of her right to, within thirty days, take exception to that decision. Harlan was further notified that "if such exceptions are not filed within [thirty days], the reprimand will be forwarded to the Clerk of the Supreme Court and spread upon the records of the Court as a public reprimand." Petitioner's Appendix at 29-30.

Harlan, however, did not challenge the Committee's decision.[1] Instead, only one week after being notified of the Committee's decision, Harlan filed the present lawsuit. Styled as a civil rights claim and brought under 42 U.S.C. sections 1983 and 1985, Harlan sought declaratory and injunctive relief as well as $1,000,000 in compensatory and punitive damages.

Because Harlan failed to challenge the decision of the Ethics Committee, a final order of public reprimand was entered by the Iowa Supreme Court on October 15, 1987. Following entry of that order, Harlan filed no petition for rehearing and failed to seek timely review by the United States Supreme Court.

In response to Harlan's federal action, the Ethics Committee filed a motion to dismiss. Central to its motion was the Committee's assertion that the District Court, pursuant to this Court's ruling in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), lacked the jurisdictional authority to consider Harlan's complaint. The Committee also asserted the members of the Committee were entitled to absolute quasi-judicial immunity from Harlan's claim for compensatory and punitive damages.

On October 30, 1987, the District Court granted the Committee's motion to dismiss, concluding it had no

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[1] Both the District Court and the Court of Appeals expressly found that Harlan failed to challenge the decision of the Ethics Committee. *See* Petitioner's Appendix at 4, 10. Harlan has not attempted to challenge this finding in her Petition for Writ of Certiorari.

subject matter jurisdiction to consider Harlan's complaint. The District Court also concluded the Ethics Committee and its individual members were absolutely immune from liability for damages.[2]

Harlan subsequently prosecuted an appeal in the Eighth Circuit Court of Appeals. That court affirmed the District Court's decision in an unpublished per curiam opinion. Following the Court of Appeals' decision, Harlan filed the Petition for Writ of Certiorari presently pending before this Court.

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[2] At the time the Committee filed its motion to dismiss, no final order of reprimand had been entered by the Iowa Supreme Court. Consequently, the Committee's motion also raised the issue of abstention. Well established precedent of this Court, including *Middlesex County Ethics Comm. v. Garden State Bar Ass'n.*, 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982), and *Ohio Civil Rights Comm. v. Dayton Christian Schools*, 477 U.S. 619, 106 S.Ct. 2718, 91 L.Ed.2d 512 (1986), as well as the total lack of any factual basis to support Harlan's claim of bad faith or harassment on the part of the Committee, would have mandated that the District Court abstain in this case. Because the state proceedings were concluded prior to the District Court's decision, however, the issue of abstention was mooted and the issue of subject matter jurisdiction became controlling.

REASONS FOR DENYING THE WRIT

I.

THE QUESTION OF THE DISTRICT COURT'S SUBJECT MATTER JURISDICTION IS CONTROLLED BY WELL-ESTABLISHED UNITED STATES SUPREME COURT PRECEDENT, RAISES NO SPECIAL AND IMPORTANT REASONS TO GRANT HARLAN'S CERTIORARI PETITION, AND WAS PROPERLY RESOLVED BY THE DISTRICT COURT.

A.

THE QUESTION OF THE DISTRICT COURT'S SUBJECT MATTER JURISDICTION IMPLICATES NONE OF THE SPECIAL AND IMPORTANT REASONS FOR GRANTING A WRIT OF CERTIORARI IDENTIFIED IN UNITED STATES SUPREME COURT RULE 17.

Rule 17 of this Court provides that a writ of certiorari will be granted "only when there are special and important reasons therefore." Sup. Ct. R. 17. The rule identifies several very limited instances in which special and important reasons might be found to justify the granting of a certiorari writ. None of these special and important reasons are implicated with respect to the jurisdictional issue that lies at the heart of this case.

Here, the District Court, following the closely analogous *Feldman* decision, dismissed Harlan's Complaint for lack of subject matter jurisdiction. The Court of Appeals affirmed the District Court's decision in a per curiam opinion.

Because neither of the opinions issued in this case was published, neither decision is of any binding precedential value within the Eighth Circuit. Further, even

assuming the jurisdictional issue was wrongly decided, the unpublished, non-precedential nature of these decisions assures that no conflict presently exists between decisions in the Eighth Circuit and decisions in other federal and state courts.

An additional reason for denying Harlan's writ is the existence of well-established, closely analogous, and controlling United States Supreme Court precedent. Very simply, the *Feldman* decision addressed and resolved the jurisdictional issues involved in this case. The District Court was obligated to follow the *Feldman* decision, and, as detailed below, correctly applied the principles of *Feldman* to the jurisdictional issues raised in this case.

Clearly, no special and important reasons exist to justify this Court's review of the jurisdictional issue raised by Harlan's complaint. Consequently, this Court should refuse to accept certiorari with respect to the jurisdiction issue. Such refusal would conclude this litigation because all other issues raised in Harlan's petition presuppose the existence of subject matter jurisdiction.

B.

THE DISTRICT COURT PROPERLY CONCLUDED IT WAS WITHOUT SUBJECT MATTER JURISDICTION TO ENTERTAIN HARLAN'S COMPLAINT.

The extensive administrative and judicial procedures established by the Iowa Supreme Court entitled Harlan to litigate all factual and legal issues implicated in the disciplinary proceedings instituted against her. Such issues would have included any federal or state constitutional

questions. By foregoing these extensive procedures, Harlan waived all further state court proceedings and consented to the final order of public reprimand filed by the Iowa Supreme Court. Iowa Sup. Ct. R. 118.3.

Through her federal action, Harlan now seeks to circumvent the procedures established by the Iowa Supreme Court and litigate in federal court issues she had every right and opportunity to pursue in the state court proceedings. In so doing, Harlan effectively seeks to overturn the final order of public reprimand entered by the Iowa Supreme Court. This, she very simply cannot do.

In *District of Columbia Court of Appeals v. Feldman*, this Court bluntly stated: "[A] United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may be had only in this Court." 460 U.S. 462, 482, 103 S.Ct. 1303, 1315, 75 L.Ed.2d 206, 222 (1983). This jurisdictional prohibition is virtually absolute and applies not only to complaints directly challenging a state court decision but also to complaints asserting federal constitutional claims that are inextricably intertwined with the state court decision. *Id.* at 482-83 n.16, 103 S.Ct. at 1315-16 n.16, 75 L.Ed.2d at 223-24 n.16.[3]

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[3] As the Ninth Circuit recently noted in *Worldwide Church of God v. McNair:*

> Claims are "inextricably intertwined" if the district court must "scrutinize not only the challenged rule itself, but the [state court's] application of the rule. . . ." If, in order to

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The clear dictates of *Feldman* can be avoided only with respect to those complaints challenging the facial validity of "state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state-court judgment in a particular case." *Id.* at 486, 103 S.Ct. at 1317, 75 L.Ed.2d at 225; *Cruza v. Supreme Court of South Carolina*, 813 F.2d 644, 646 (4th Cir. 1987). Even a general constitutional challenge may be precluded, however, if a state's res judicata principles would foreclose litigation of the issue. *Feldman*, 460 U.S. at 487-89, 103 S.Ct. at 1318, 75 L.Ed.2d at 225-26; *Nordgren v. Hafter*, 789 F.2d 334, 338 n.1 (5th Cir.), *cert. denied*, 479 U.S. 850, 107 S.Ct. 177, 93 L.Ed.2d 113 (1986).

Here, *Feldman*, as well as the numerous cases applying its clear dictates, compels the dismissal of Harlan's complaint. First, Harlan has never challenged the Committee's assertion that the underlying state action as well as the entire disciplinary process constituted judicial proceedings. Addressing this question of federal law, the District Court itself expressly concluded:

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> resolve the claim, "the district court would have to go beyond mere review of the state rule *as promulgated*, to an examination of the rule *as applied* by the state court to the particular factual circumstances of [the plaintiff's] case," then the court lacks jurisdiction.

805 F.2d 888, 892 (9th Cir. 1986) (quoting *Razatos v. Colorado Supreme Court*, 746 F.2d 1429, 1433 (10th Cir. 1984) (emphasis in original), *cert. denied*, 471 U.S. 1016, 105 S.Ct. 2019, 85 L.Ed.2d 301 (1985)).

> The proceedings in this matter involved a judicial inquiry in which the Committee, acting on behalf of the Iowa Supreme Court, "was called upon to investigate, declare and enforce 'liabilities as they [stood] on present or past facts and under laws supposed already to exist.'"

Harlan v. Comm. on Professional Ethics & Conduct, No. 87-619-B, slip op. at 5 n.3 (S.D. Iowa Oct. 30, 1987) (quoting *Feldman*, 460 U.S. at 479, 103 S.Ct. at 1313, 75 L.Ed.2d at 221) (quoting *Prentis v. Atlantic Coast Lens Co.*, 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150, 158 (1908)).

The District Court's conclusion the state's inquiry was judicial in nature is clearly consistent with well-established federal precedent. *See, e.g., Feldman*, 460 U.S. at 476-82, 103 S.Ct. at 1311-14, 75 L.Ed.2d at 218-22; *Middlesex County Ethics Comm. v. Garden State Bar Ass'n.*, 457 U.S. 423, 431-34, 102 S.Ct. 2515, 2521-23, 73 L.Ed.2d 116, 124-26 (1982); *Nordgren*, 789 F.2d at 336-37; *Thomas v. Kadish*, 748 F.2d 276, 281-82 (5th Cir. 1983), *cert. denied*, 473 U.S. 907, 105 S.Ct. 3531, 87 L.Ed.2d 655 (1985); *Clulow v. Oklahoma*, 700 F.2d 1291, 1298 (10th Cir. 1983).

Because the Iowa Supreme Court's October 15, 1987, order completed the state's judicial inquiry, the United States Supreme Court and only the United States Supreme Court could review that decision. *See Feldman*, 460 U.S. at 482, 103 S.Ct. at 1315, 75 L.Ed.2d at 222. As *Feldman* itself made clear:

> . . . [o]rders of a state court relating to the admission, discipline, and disbarment of members of its bar may be reviewed only by the Supreme Court of the United States on certiorari to the state court, and not by means of an original action in a lower federal court.

Id. at 483 n.16, 103 S.Ct. at 1316 n.16, 75 L.Ed.2d at 223 n.16 (quoting *MacKay v. Nesbet*, 412 F.2d 846, 846 (9th Cir. 1969), *cert. denied*, 396 U.S. 960, 90 S.Ct. 435, 24 L.Ed.2d 425 (1970)). This rule controls even in those situations in which the state court action is itself challenged as unconstitutional. *Id.* at 486, 103 S.Ct. at 1317, 75 L.Ed.2d at 225.

Second, in contrast with that portion of the complaint in *Feldman* that asserted a particular rule was itself facially unconstitutional, *id.*, Harlan's complaint makes no general constitutional challenge to any provision of the Iowa Code of Professional Responsibility. Rather, outside of one oblique comment in paragraph 13 of her complaint, Harlan's complaint focuses wholly on the events underlying and giving rise to the state disciplinary proceedings. Specifically, Harlan's complaint asserts: (1) all her actions were protected by the First Amendment and could not form the basis for disciplinary action; (2) the disciplinary action was initiated in bad faith, without any genuine expectation of success, and in retaliation against her; and (3) the defendants knew or reasonably should have known their conduct was violative of her First Amendment rights. *See similarly id.* at 486-87, 103 S.Ct. at 1317-18, 75 L.Ed.2d at 225.

The very essence of these claims is that Harlan's actions were protected by the First Amendment and consequently no disciplinary action could constitutionally be taken against her. In other words, the relevant provisions of the Code of Professional Responsibility relied upon by the Ethics Committee could not constitutionally be applied to Harlan. This claim is inextricably intertwined with and would require the District Court to review the underlying state proceedings. "This the District Court

may not do." *Id.* at 483 n.16, 103 S.Ct. at 1315-16 n.16, 75 L.Ed.2d at 223 n.16.

Finally, Harlan does not and clearly could not claim the administrative and judicial procedures available under Iowa law failed to provide her a full and fair opportunity to litigate her First Amendment defense. As identified above, the Iowa Supreme Court has established extensive procedures under which an attorney is able to challenge and attack potential disciplinary action. Harlan points to nothing that would indicate these procedures preclude the Ethics Committee, the Grievance Commission, or the Iowa Supreme Court from considering properly raised issues of federal constitutional law. *See by contrast Robinson v. Ariyoshi*, 753 F.2d 1468, 1472 (9th Cir. 1985), *vacated on other grounds*, 477 U.S. 902, 106 S.Ct. 3269, 91 L.Ed.2d 560 (1986); *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210, 104 S.Ct. 2398, 81 L.Ed.2d 355 (1984); *Miller v. Washington State Bar Ass'n.*, 679 F.2d 1313, 1316 (9th Cir. 1982) (in each of which a party had no reasonable opportunity to raise and litigate the federal constitutional question in the state court proceedings).

By jumping to federal court, Harlan simply bypassed and waived all opportunity to litigate her federal constitutional claim in the state proceedings. As a result, just as a failure to assert a federal constitutional issue during state judicial proceedings may bar United States Supreme Court review of a final state court decision, so too Harlan's deliberate decision to bypass available state proceedings bars her from relying on an unlitigated question of federal constitutional law as a basis for establishing

the subject matter jurisdiction of the District Court. *See Feldman*, 460 U.S. at 482 n.16, 103 S.Ct. at 1315-16 n.16, 75 L.Ed.2d at 223 n.16.

The District Court properly followed the dictates of *Feldman* in dismissing Harlan's complaint. To conclude otherwise would seriously undermine Iowa's attorney disciplinary process and would allow Harlan to attack collaterally a final state court decision entered in large part as a result of her own failure to take advantage of procedural protections and remedies established by the Iowa Supreme Court to protect her interests as well as the interests of the general public.

II.

ASSUMING SUBJECT MATTER JURISDICTION EXISTS, THE DISTRICT COURT PROPERLY CONCLUDED THE MEMBERS OF THE ETHICS COMMITTEE ARE ABSOLUTELY IMMUNE FROM HARLAN'S CLAIM FOR COMPENSATORY AND PUNITIVE DAMAGES.

A.

THE COURT OF APPEALS' RESOLUTION OF THE IMMUNITY ISSUE IMPLICATES NONE OF THE SPECIAL AND IMPORTANT REASONS FOR GRANTING A WRIT OF CERTIORARI IDENTIFIED IN UNITED STATES SUPREME COURT RULE 17.

The Court of Appeals affirmed the District Court's finding that the members of the Committee were immune from a claim for damages. It did so, however, not on the

basis of the issue's merits but because Harlan failed to raise and address the immunity issue in her appeal.

In reaching this result, the Court followed well-established Eighth Circuit precedent. *See, e.g., Rubek v. Barnhart*, 814 F.2d 1283, 1285 (9th Cir. 1987); *Burough v. Duluth Missabe & Iron Range Ry. Co.*, 762 F.2d 66, 68 n.1 (8th Cir. 1985). That precedent, which simply requires a party seeking reversal to identify and address issues relied upon as a basis for reversal, is consistently followed in the other federal circuits. *See, e.g., Collins v. City of San Diego*, 841 F.2d 337, 339 (9th Cir. 1988); *Travelers Indemnity Co. v. Atlantic Express Line*, 837 F.2d 187, 188 (5th Cir.), *cert. denied*, 57 U.S.L.W. 3259 (1988); *Appley v. West*, 832 F.2d 1021, 1030 (7th Cir. 1987); *McMurphy v. City of Flushing*, 802 F.2d 191, 198-99 (6th Cir. 1986). Consequently, the rule applied by the Court of Appeals to resolve the immunity question in no way conflicts with the rule applied in other federal courts, does not implicate an important, but undecided question, of federal law, and does not conflict with the decisions of this Court.[4]

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[4] The Court of Appeals clearly acted within its discretion in concluding Harlan had waived the immunity issue. Harlan's notice of appeal did not mention the immunity issue. Her statement of issues filed pursuant to Federal Rule of Appellate Procedure 10(b)(3) identified only the subject matter jurisdiction issue. Neither Harlan's initial brief nor her reply brief raised or addressed the immunity issue. Finally, during oral argument, Harlan addressed the immunity issue only after the Court expressly raised the question of waiver.

B.

EVEN ASSUMING THE COURT OF APPEALS ERRED IN NOT ADDRESSING THE MERITS OF THE IMMUNITY QUESTION, THAT ISSUE WAS PROPERLY ADDRESSED AND RESOLVED BY THE DISTRICT COURT.

Well-settled precedent of this Court establishes the absolute immunity from damages of state court judges and prosecutors. *Butz v. Economou*, 438 U.S. 478, 509-12, 98 S.Ct. 2894, 2911-13, 57 L.Ed.2d 895, 917-19 (1978); *Stump v. Sparkman*, 435 U.S. 349, 355-56, 98 S.Ct. 1099, 1104-05, 55 L.Ed.2d 331, 338-39 (1978). Members of administrative boards or commissions who perform judicial or quasi-judicial functions are likewise absolutely immune from claims for damages. *Butz*, 438 U.S. at 512-513, 98 S.Ct. at 2914, 57 L.Ed.2d at 920; *Vakas v. Rodriquez*, 728 F.2d 1293, 1296 (10th Cir.), *cert. denied*, 469 U.S. 981, 105 S.Ct. 384, 83 L.Ed.2d 319 (1984).

For a variety of reasons, the members of the Ethics Committee are also entitled to absolute quasi-judicial immunity from Harlan's claim for damages. First, in exercising their authority to take disciplinary action, members of the Committee perform quasi-judicial and quasi-prosecutorial functions. They also exercise by express delegation the Iowa Supreme Court's inherent and statutory authority to regulate the bar. *See* Iowa Const. Art. III, § 1, Iowa Code § 602.1206 (1987); Iowa Sup. Ct. Rule 121. As such, Committee members serve as an arm of the Iowa Supreme Court and shoulder much of the work that would otherwise fall on individual justices of the Iowa Supreme Court.

Second, as in *Butz*, well defined procedural protections built into the attorney disciplinary process eliminate the need for private damage actions as a means of remedying unconstitutional conduct. *See Butz*, 438 U.S. at 512-13, 98 S.Ct. at 2914, 57 L.Ed.2d at 920. These safeguards include the right to take exception to a Committee reprimand, the right to a full evidentiary hearing, and the right to de novo review before the Iowa Supreme Court. *See* Iowa Sup. Ct. Rules 118.2, 118.7, and 118.11. Further, any attorney aggrieved by a final disciplinary decision of the Iowa Supreme Court may seek review in the United States Supreme Court. 28 U.S.C. § 1257; *see In re Randall*, 640 F.2d 898, 901 (8th Cir.), *cert. denied*, 454 U.S. 880, 102 S.Ct. 361, 70 L.Ed.2d 189 (1981).

Finally, and again as in *Butz*, members of the Committee, like judges and prosecutors, are likely targets for those angered by their decisions. To ensure their continued independence as well as their willingness to serve, Committee members, who serve voluntarily and without pay, must be free to exercise their authority and discretion without fear of harassment or intimidation, *Butz*, 438 U.S. at 512, 98 S.Ct. at 2913, 57 L.Ed.2d at 919, and thus must be protected from the kind of suit here involved, *see State v. Baker*, 293 N.W.2d 568, 576 (Iowa 1980).

The District Court's conclusion that members of the Committee are entitled to absolute quasi-judicial immunity is entirely consistent with analogous circuit court precedent. *See Horwitz v. State Board of Medical Examiners*, 822 F.2d 1508, 1513-16 (10th Cir.), *cert. denied*, ___ U.S. ___, 108 S.Ct. 453, 98 L.Ed.2d 394 (1987); *Childs v. Reynoldson*, 777 F.2d 1305, 1306 (8th Cir. 1985); *Austin Municipal Sec. Inc. v. National Ass'n. of Sec. Dealers*, 757 F.2d 676, 690-91 (5th Cir. 1985);

Clulow v. Oklahoma, 700 F.2d 1291, 1298 (10th Cir. 1983); *Simons v. Bellinger*, 643 F.2d 774, 777-85 (D.C. Cir. 1980).

As a final note, the only recognized exception to the grant of absolute immunity from a claim for damages would require Harlan to demonstrate the Committee's actions were taken in the "clear absence of all jurisdiction." *Sparkman*, 435 U.S. at 357, 98 S.Ct. at 1105, 55 L.Ed.2d at 339. Harlan, however, has made no attempt to rely on this narrow exception and nothing in her complaint even remotely suggests its potential applicability.[5]

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[5] For purposes of lawsuits filed in Iowa state court, the Iowa Supreme Court has explicitly resolved the immunity issue. In Iowa Supreme Court Rule 118, the Court provided that "members of the committee on professional ethics and conduct shall be immune from suit for any conduct in the course of their official duties." Iowa Sup. Ct. R. 118.19.

CONCLUSION

As demonstrated, Harlan's petition identifies no special and important reason why a grant of certiorari is appropriate in this case. Further, the issues of subject matter jurisdiction and immunity were properly resolved below and are entirely consistent with well-established precedents of this Court. Consequently, the Ethics Committee respectfully requests that this Court deny Harlan's Petition for Writ of Certiorari.

Respectfully submitted,

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The Committee on Professional Ethics and Conduct of the Iowa State Bar Association

January 1988

GRIEVANCE COMMISSION

Court Rule 118. Complaint procedure.

Referred to in Rules EC 2-11, DR 2-101, DR 2-105, Disciplinary Guidelines; Grievance Commission Rules 3 and 7, Appendix A; Ethics Procedure Rule 3.2; Ct.R. 121.2 "C" (5); 121.3 "d" (9), "i" (8); 121.4; 121.5 "a" (2); 123.5 "b"; Lawyer Mediator Rule 7B

Court Rule 118.1. Grievance Commission. There is hereby created the Grievance Commission of the Supreme Court of Iowa whose members shall be the Committee on Grievances of the Iowa State Bar Association, consisting of three lawyers from each judicial election district, to be appointed by the President-Elect of The Iowa State Bar Association, who shall designate one of them, annually, as chairman of the commission, and not less than five nor more than thirteen lay persons appointed by the court, and their successors as confirmed by order of this court. Such members are appointed commissioners of this court. The grievance commission, or a duly appointed division thereof shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Code of Professional Responsibility for Lawyers or laws of the United States, and the laws of the state of Iowa or any other state or territory within their respective jurisdictions by lawyers who are members of the bar of this court. The grievance commission shall have such other powers and duties as are provided in these rules.

Court Rule 118.2. Processing of complaints. The members of the Committee on Professional Ethics and

Conduct of the Iowa State Bar Association, consisting of seven lawyers appointed by the President-elect of The Iowa State Bar Association, who shall designate one of them, annually, as chairman of the committee, and two lay persons appointed by the court, and their successors, as confirmed by order of this court are appointed commissioners of this court to initiate or receive, and process complaints against any attorney licensed to practice law in this state for alleged violations of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States or the state of Iowa. Upon completion of any such investigation the committee on professional ethics and conduct shall either dismiss the complaint made, or admonish or reprimand the attorney, or file and prosecute the complaint before the grievance commission or any division thereof.

No member appointed to either the Committee on Professional Ethics and Conduct of the Iowa State Bar Association or the Grievance Commission of the Supreme Court of Iowa shall undertake to represent, in any stage of the investigative or disciplinary proceedings, any lawyer against whom an ethical complaint has been filed. To avoid even the appearance of impropriety, no member of the Committee on Professional Ethics and Conduct of the Iowa State Bar Association should undertake to represent any lawyer in any malpractice, criminal, or other matter where it appears that the filing of an ethical complaint against that lawyer is reasonably likely. A member of the Grievance Commission of the Supreme Court of Iowa may represent a lawyer in a malpractice, criminal, or other matter; however, a member must decline representation of the lawyer in any stage of the investigative or

disciplinary proceedings, and not participate in any hearing or other proceeding before the commission.

Referred to in R.Prob.P.5"d"

Court Rule 118.3. Reprimand. In event an attorney is reprimanded by the committee on professional ethics and conduct, a copy of the reprimand shall be filed with the clerk of the grievance commission who shall forthwith cause a copy of the reprimand to be served on the attorney by personal service in the manner of an original notice in civil suits or by restricted certified mail, with a notice attached stating that the attorney has thirty days from the date of completed service to file exceptions to the reprimand with the clerk of the grievance commission. Service shall be deemed completed on the date of personal service or the date shown by the postal receipt of delivery of the notice to the attorney. If the attorney fails to file an exception such failure shall constitute a waiver of any further proceedings and a consent that the reprimand be final and public. In that event, the clerk of the grievance commission shall cause a copy of the reprimand to be forwarded to the clerk of this court, together with proof of the aforesaid service thereof and a statement that no exceptions had been filed within the time prescribed. This court shall thereupon cause the reprimand to be spread upon the records of the court as a public document. In event, however, the attorney concerned files timely exception to the reprimand, no report of the reprimand shall be made to the clerk of this court and the reprimand shall be stricken from the records. The committee on professional ethics and conduct may, however, proceed further with any complaint against such

attorney before the grievance commission. When a reprimand has been filed but exception is duly taken thereto such reprimand shall not be admissible in evidence in any hearing before the grievance commission.

Court Rule 118.4. Rules. The grievance commission and the committee on professional ethics and conduct shall each adopt reasonable rules prescribing the procedure to be followed in all disciplinary proceedings before each such body, which rules shall be subject to approval by this court.

Court Rule 118.5. Complaints. Every complaint filed against an attorney with the grievance commission shall be signed and sworn to by the chairman of the committee on professional ethics and conduct and served upon the attorney concerned as provided by the rules of the grievance commission. Such complaints shall be sufficiently clear and specific in their charges to reasonably inform the attorney against whom the complaint is made of the misconduct he or she is alleged to have committed. All complaints, motions, pleadings, records, reports, exhibits, evidence and all other documents or things filed under this rule or received in evidence in a hearing before the grievance commission shall be filed with and preserved by the secretary of the grievance commission in Des Moines, Iowa, all of which shall at all times be available to this court or anyone designated by this court.

Referred to in Grievance Commission Rule 5

Court Rule 118.6. Discovery. In any disciplinary proceeding or action taken by the committee on professional ethics and conduct, discovery shall be permitted as provided in R.C.P. 121 to 134 inclusive; 140 and 141; and in

154 to 158. the attorney against whom a complaint has been filed, in addition to the restriction stated in R.C.P. 122(a) shall not be required to answer an interrogatory pursuant to R.C.P. 126; a request for admission pursuant to R.C.P. 127; a question upon oral examination pursuant to R.C.P. 140; or a question upon written interrogatories, pursuant to R.C.P. 150; if the answer would be self-incriminatory. In addition thereto, evidence and testimony may be perpetuated as provided in R.C.P. 159 to 166. If either party is to utilize discovery, it must be commenced within thirty days after service of the complaint. The commission may permit amendments to the complaint to conform to the proof or to raise new matters as long as the respondent has notice thereof and a reasonable time to prepare his defense thereto prior to the date set for hearing. The grievance commission, or any division thereof, shall receive an application and may enter an order to enforce discovery or to perpetuate any evidence. [Correction March 1983]

Court Rule 118.7. Hearing. After a complaint has been filed with the grievance commission and an answer filed thereto pursuant to its rules or the time provided for such answer has expired, the grievance commission shall immediately upon the expiration of thirty days from the date of service of the complaint set the matter for hearing and notify all parties therof at least ten days prior to the date of service of the complaint set the matter for hearing and notify all parties thereof at least ten days prior to the date set for such hearing, by restricted certified mail or personal service. If neither party has commenced any discovery within thirty days of the date of service of the complaint, the hearing shall be not less than forty-five days nor more than sixty days after the service of the

complaint. If a party has commenced discovery, the hearing shall be not less than sixty days nor more than seventy-five days after the service of the complaint. The commission may grant reasonable continuances but only upon written application supported by affidavit. Proceedings and hearings before the grievance commission or any division thereof shall be confidential unless the attorney involved requests otherwise.

In the event an attorney previously has been publicly reprimanded; or an attorney's license has been suspended, revoked, or he or she has been disbarred, a certified copy of said action shall be admitted into evidence at any hearing involving disciplinary proceedings without the necessity of a bifurcated hearing. The grievance commission and this court shall consider this evidence along with all other evidence in the case in determining the attorney's fitness or unfitness to practice law in the state of Iowa.

Court Rule 118.8. Subpoenas. The clerk of the district court of the county in which any disciplinary hearing is to be held shall issue subpoenas of all kinds upon request of the grievance commission, the complainant, or the attorney against whom a complaint has been filed. Any member of the grievance commission is hereby empowered to administer oaths to all witnesses, and shall cause such testimony to be officially reported by a court reporter. The grievance commission shall report to the response to any subpoena or any ruling of said commission.

Court Rule 118.9. Decision. At the conclusion of a hearing upon any complaint against an attorney, the

grievance commission shall dismiss the complaint, or recommend to this court that the attorney be reprimanded or the license to practice law of the accused attorney be suspended or revoked. If the grievance commission recommends reprimand of the attorney or recommends suspension or revocation of the attorney's license, it shall report to this court, in writing, its findings of fact, conclusions of law, and recommendations. A copy of this report shall also be filed with the client security and attorney disciplinary commission. The grievance commission may permit a reasonable time for the parties to file post-hearing briefs and arguments. The disposition or report of the commission shall be made or filed with this court within thirty days of the date set for the filing of the last responsive brief and argument. If the commission cannot reasonably make its determination or file its report within such time limit, it shall report that fact and the reasons therefor to the parties and the clerk of this court. Any determination or report of the commission need only be concurred in by a majority of the commissioners sitting. Any commissioner has the right to file with this court his or her dissent from the majority determination or report. Such matter shall then stand for final disposition in this court. If the grievance commission dismisses the complaint, no report shall be made to this court, except as provided in rule 118.20, however, the grievance commission shall, within ten days of its determination to dismiss, notify the complainant in writing of its report. If no appeal is applied for by the complainant within ten days after such notice, the grievance commission dismissal shall be final. Any report of reprimand or recommendations for license suspension or revocation

shall be a public document upon the filing thereof with the clerk of this court.

Referred to in Ct.R. 118.11; Grievance R. 14

Court Rule 118.10. Disposition by the supreme court. Any report filed by the grievance commission with this court shall be served upon the attorney concerned as provided by the rules of the grievance commission. Such report shall be entitled in the name of the complainant versus the accused attorney as the respondent. Within fourteen days after a report is filed with the clerk of this court, the secretary of the grievance commisssion shall transmit to the clerk of this court the entire record made before the commission. If no appeal is taken or application for permission to appeal is filed within ten days as provided in court rule 118.11, the court shall proceed to review de novo the record made before the commission and determine the matter without oral argument or further notice to the parties. Upon such review de novo the court may impose a lesser or greater sanction than the discipline recommended by the grievance commission.

This court may revoke or suspend the license of an attorney admitted to practice in Iowa upon any of the following grounds: conviction of a felony, conviction of a misdemeanor involving moral turpitude, violation of any provision of the Iowa Code of Professional Responsibility for Lawyers, or any cause now or hereafter provided by statute or these rules.

Referred to in Ct.R. 118.11

Court Rule 118.11. Appeal. The respondent may appeal from the report filed by the grievance commission pursuant to rule 118.9 to this court. Respondent's notice

of appeal must be filed with the secretary of the grievance commission within ten days after the report is filed with the clerk of this court. The respondent shall serve a copy of the notice of appeal on the complainant or its counsel pursuant to Iowa rule of appellate procedure 30. Promptly after filing notice of appeal with the secretary of the grievance commission respondent shall mail or deliver a copy of the notice of appeal to the clerk of the supreme court.

The complainant, within ten days after filing of final disposition of a case by the grievance commission, may apply to this court for permission to appeal from a ruling, report, or recommendation of the grievance commission. This court may grant such appeal in a manner similar to the granting of interlocutory appeals in civil cases under the Iowa rules of appellate procedure. The filing fee and the docket fee shall be waived upon complainant's written requests. If such appeal is from the grievance commission's dismissal of a complaint, or of any charge contained therein, such appeal shall remain confidential. In making such application the complainant shall refer to the respondent's initials, rather than respondent's name. All references to the respondent in briefs and oral arguments shall be by respondent's initials. In the event this court reverses or modifies the report of the grievance commission, such court order of reversal or modification shall become a public record.

After the filing of a notice of appeal or the granting of permission to appeal, the appeal shall proceed pursuant to the Iowa rules of appellate procedure to the full extent those rules are not inconsistent with this rule. Appellant shall cause the apppeal to be docketed within

ten days after the filing of notice of appeal or the granting of permission to appeal. The matter shall be docketed under the title given to the action before the grievance commission with the appellant identified as such pursuant to Iowa rule of appellate procedure 12(a). The abbreviated time limits specified in Iowa rule of appellate procedure 17 shall apply. Enlargements of time are not favored and shall not be granted except upon a verified showing of the most unusual and compelling circumstances. Review shall be de novo. If a respondent's appeal is dismissed for lack of prosecution pursuant to Iowa rule of appellate procedure 19 or for any other reason, this court shall proceed to review and decide the matter pursuant to court rule 118.10 as if no appeal had been taken.

Referred to in R. App. P. 12; Ct.R. 118.10; Grievance R. 14

Court Rule 118.12. Suspension. In event an order of this court provides for the suspension of the license of an attorney to practice law, such suspension shall continue for the minimum time specified in such order and until this court has approved the attorney's written application for reinstatement. In the order of suspension or by order at any time before reinstatement, this court may require the suspended attorney to meet reasonable conditions for reinstatement including, but not limited to, passing the Multistate Professional Responsibility Examination.

Any attorney suspended shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements,

contracts, wills, and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

Nothing in this rule shall preclude an attorney, law firm, or professional association from employing a suspended attorney to perform such services only as may be ethically performed by lay persons employed in attorneys' offices, under the following conditions:

(a) The place of performance of such services shall be not less than one hundred miles from the suspended attorney's former law practice; and

(b) Notice of employment, together with a full job description, shall be provided to the committee on professional ethics and conduct of the Iowa State Bar Association before employment commences; and

(c) Informational reports, verified by the employer and employee, shall be submitted quarterly to the committee on professional ethics and conduct of the Iowa State Bar Association. Such reports shall contain a certification that no aspect of the employee's work has involved the unauthorized practice of law; and

(d) No suspended attorney shall have direct or personal association with any client, or shall disburse or otherwise handle funds or property of a client.

Typo corrected in paragraph (b) – "will" to "with" in November 87 Supp.

Court Rule 118.13. Application for reinstatement. An application for reinstatement from any suspension

shall be filed with the clerk of this court not more than sixty days prior to expiration of such suspension or time fixed for making application therefor in accordance with the provisions of court rule 117. In addition thereto the applicant shall state, in said application, that he or she has complied in all respects with the orders and judgments of this court relating to the suspension. The applicant shall also submit to this court satisfactory proof that he or she, at time of the application, is of good moral character and in all respects worthy of the right to practice law.

Court Rule 118.14. Conviction of a crime. Upon receipt by this court of satisfactory evidence that an attorney had pled guilty to, or nolo contendere to, or has been convicted of a crime which would be grounds for license suspension or revocation, such attorney may be temporarily suspended from the practice of law by this court regardless of the pendency of an appeal. Not less than twenty days prior to the effective date of such suspension, the attorney concerned shall be notified, in writing directed by restricted certified mail to his last address as shown by the records accessible to this court, that he has a right to appear before one or more justices of this court at a specified time, at a designated place and show cause why such suspension should not take place. Any hearing so held shall be informal and the strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to him in written form at a later time.

Any attorney suspended pursuant to this rule shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

For good cause shown, this court may set aside an order temporarily suspending an attorney from the practice of law as hereinabove provided, upon application by such attorney and hearing thereon in accordance with court rule 117, but such reinstatement shall neither terminate a disciplinary proceeding then pending nor stand as a bar to any such proceeding thereafter instituted against such attorney.

An attorney temporarily suspended under the aforesaid provisions of this rule shall be promptly reinstated upon the filing of a good and sufficient certificate disclosing the underlying conviction of a crime has been finally reversed or set aside, but such reinstatement shall neither terminate a disciplinary proceeding then pending nor stand as a bar to any such proceeding thereafter instituted against such attorney.

The clerk of any court in this state in which an attorney has pled guilty or nolo contendere to, or been convicted of a crime as aforesaid shall, within ten days

thereafter transmit a certificate thereof to the clerk of this court.

Court Rule 118.15. Disbarment on consent. An attorney subject to investigation or a pending proceeding involving allegations of misconduct subject to disciplinary action may acquiesce in his or her disbarment, but only by delivering to the grievance commission an affidavit stating he or she consents to disbarment and that

(1) The consent is freely and voluntarily given absent any coercion or duress, with full recognition of all implication attendant upon such consent;

(2) He or she is aware of a presently pending investigation into, or proceeding involving allegations that there exist grounds for discipline the nature of which shall be specifically set forth;

(3) He or she acknowledges the material facts so alleged are true; and

(4) In event proceedings were instituted upon the matters under investigation, or if existent proceedings were pursued, he or she could not successfully defend against same.

Upon receipt of such affidavit the grievance commission shall cause same to be filed with the clerk of this court whereupon this court shall enter an order disbarring such attorney on consent.

Any order disbarring an attorney on consent shall be a matter of public record. However, the affidavit required as aforesaid shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

Court Rule 118.16. Disability suspension. In event an attorney shall at any time in any jurisdiction be duly adjudicated a mentally incapacitated person, or an alcoholic, or a drug addict, or shall be committed to an institution or hospital for treatment thereof, the clerk of any court in Iowa in which any such adjudication or commitment is entered shall, within ten days thereafter, certify same to the clerk of this court.

Upon the filing of any such certificate or a like certificate from another jurisdiction or upon determination by this court pursuant to a sworn application on behalf of a county bar association or the Committee on Professional Ethics and Conduct of the Iowa State Bar Association, that an attorney is not discharging professional responsibilities due to disability, incapacity, abandonment of practice, or disappearance, this court may enter an order suspending the license of such attorney to practice law in this state until further order of this court. Not less than twenty days prior to the effective date of such suspension, the attorney concerned or his or her guardian and the director of the insitution or hospital to which such attorney has been committed, if any, shall be notified, in writing directed by restricted certified mail to his or her last address as shown by the records accessible to this court, that the attorney has a right to appear before one or more justices of this court at a specified time, at a designated place and show cause why such suspension should not take place; provided, however, that, upon a showing of exigent circumstances, emergency or other compelling cause, the court may reduce or waive the twenty-day period and the effective date of action above referred to. Any hearing so held shall be informal and the

strict rules of evidence shall not apply. The decision rendered may simply state the conclusion and decision of the participating justice or justices and may be orally delivered to the attorney at the close of the hearing or sent to the attorney in written form at a later time. A copy of such suspension order shall be given the suspended attorney, or to his or her guardian and the director of the insitution or hospital to which such suspended attorney has been committed, if any, by restricted mail or personal service as this court may direct.

Any attorney suspended pursuant to this rule shall refrain, during such suspension, from all facets of the ordinary law practice including, but not limited to, the examination of abstracts; consummation of real estate transactions; preparation of legal briefs, deeds, buy and sell agreements, contracts, wills and tax returns; and acting as a fiduciary. Such suspended attorney may, however, act as a fiduciary for the estate, including a conservatorship or guardianship, of any person related to the suspended attorney within the second degree of affinity or consanguinity.

No attorney suspended due to disability under the aforesaid provisions of this rule may engage in the practice of law in this state until reinstated by order of this court.

Upon being notified of the suspension of the attorney, the chief judge in the judicial district in which the attorney practiced shall appoint a lawyer or lawyers to serve as trustee to inventory the files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons.

Such appointment shall be subject to confirmation by the supreme court. The appointed lawyer shall serve as a special member of the Committee on Professional Ethics and Conduct of the Iowa State Bar Association and as a commissioner of the supreme court for the purposes of the appointment. The trustee may seek reasonable fees and reimbursement of costs of the trust from the suspended attorney. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security and Attorney Disciplinary Commission, in the exercise of its sole discretion, shall determine the merits of the claim and the amount of any payment from the fund. When the suspended attorney is reinstated to practice law in this state, or all pending representation of clients has been completed, or the purposes of the trust have been accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

Any attorney so suspended shall be entitled to apply for reinstatement to active status once each year or at such shorter intervals as this court may, in the suspension order, provide or specify. An attorney suspended due to any aforesaid disability may be reinstated by this court upon a showing, by clear and convincing evidence, that the attorney's disability has been removed and he or she is fully qualified to resume the practice of law. Upon the filing of an application for reinstatement this court may take or direct any action deemed necessary or proper to determine whether such suspended attorney's disability has been removed, including a direction for an examination of the applicant by such qualified medical experts as

this court shall designate. In its discretion this court may direct that the expenses of such an examination be paid by the petitioning attorney.

The filing of an applicaiton for reinstatement to active status by an attorney suspended due to disability shall constitute a waiver of any doctor-patient privilege with regard to any treatment of the petitioning attorney during the period of his or her disability. Such attorney shall also set forth in his or her application for reinstatement the name of every psychiatrist, psychologist, physician and hospital or any other insitution by whom or in which the petitioning attorney has been examined or treated since his or her suspension due to disability, and shall also furnish to this court written consent that any such psychiatrist, psychologist, physician and hospital or other institution by whom or in which the petitioner has been examined or treated as aforesaid may divulge any and all information and records requested by this court or any court-appointed medical experts.

Where an attorney has been suspended due to any aforesaid disability and thereafter, in proceedings duly had, he or she shall be judicially held to be competent or cured, this court may dispense with further evidence regarding removal of his or her disability and may order his or her reinstatement to active status upon such terms as are deemed reasonably proper and advisable.

Court Rule 118.16A. Death or suspension of practicing attorney. Upon a sworn application on behalf of a county bar asociation or the Committee on Professional Ethics and Conduct of the Iowa State Bar Association

showing that a practicing attorney has died or been suspended or disbarred from the practice of law, and a reasonable necessity exists, the chief judge in the judicial district in which the attorney practiced shall appoint a lawyer or lawyers to serve as trustee to inventory the files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons. Such appointment shall be subject to confirmation by the supreme court. The appointed lawyer shall serve as a special member of the Committee on Professional Ethics and Conduct of the Iowa State Bar Association as a commissioner of the supreme court for the purposes of the appointment. The trustee may seek reasonable fees and reimbursement of costs of the trust from the deceased attorney's estate or the attorney whose license to practice law has been suspended or revoked. If reasonable efforts to collect such fees and costs are unsuccessful, the trustee may submit a claim for payment from the Clients' Security Trust Fund of the Bar of Iowa. The Client Security and Attorney Disciplinary Commission, in the exercise of its sole discretion, shall determine the merits of the claim and the amount of any payment from the fund. When all pending representation of clients has been completed or the purposes of the trust have been accomplished, the trustee may apply to the appointing chief judge for an order terminating the trust.

Court Rule 118.17. Reciprocal discipline. Any attorney admitted to practice in this state, upon being subjected to professional disciplinary action in another jurisdiction or in any federal court, shall promptly advise the grievance commission, in writing, of such action. Upon being informed that an attorney admitted to practice in this state has been subjected to discipline in another jurisdiction or any federal court, the grievance commission shall obtain a certified copy of such disciplinary order and cause same to be filed in the office of the clerk of this court.

Upon receipt of a certified copy of an order disclosing an attorney admitted to practice in this state has been disciplined in another jurisdiction or any federal court, this court shall promptly give notice thereof by restricted certified mail or personal service directed to such attorney containing: (1) A copy of said disciplinary order from the other jurisdiction or federal court, and (2) an order directing that such disciplined attorney inform this court, within thirty days after receipt of said notice, of any claim by such attorney that imposition of identical discipline in this state would be too severe, too lenient or otherwise unwarranted, giving the specific reasons therefor. A like notice shall be mailed to the committee on professional ethics and conduct of the Iowa State Bar Association. If either party so informs this court, the matter shall be set for hearing before five or more justices of this court and the parties notified thereof by restricted certified mail at least ten days prior to the date set. At such hearing a certified copy of the testimony, transcripts, exhibits, affidavits and other matters introduced into evidence in such jurisdiction or federal court shall be

admitted into evidence as well as any findings of fact, conclusions of law, decision and orders decided or issued. Any such findings of fact shall be conclusive and not subject to readjudication. Thereafter, the court shall enter such findings, conclusions and orders that it deems appropriate. If neither party so informs this court within thirty days from service of notice issued pursuant to the foregoing provisions hereof, this court may impose the identical discipline, unless this court finds that on the face of the record upon which the discipline is predicated it clearly appears: (1) The disciplinary procedure was so lacking in notice and opportunity to be heard as to constitute a deprivation of due process; or (2) there was such infirmity of proof establishing misconduct as to give rise to the clear conviction that this court could not, conscientiously, accept as final the conclusion on that subject; or (3) the misconduct established warrants substantially different discipline in this state.

Where this court determines that any of the aforesaid factors exist, such order as is deemed appropriate may be entered by this court. Rule 117 shall apply to any subsequent reinstatement or reduction or stay of discipline.

Court Rule 118.18. Notification of clients and counsel. In every case in which a respondent is ordered to be disbarred or suspended, the respondent shall:

(*a*) Within fifteen days in the absence of co-counsel, notify his or her clients in all pending matters to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another lawyer;

(*b*) Within fifteen days deliver to all clients being represented in pending matters any papers or other property to which they are entitled or notify them and any cocounsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;

(*c*) Within thirty days refund any part of any fees paid in advance that have not beer earned;

(d) Within fifteen days notify opposing counsel in pending litigation or, in the absence of such counsel, the adverse parties, of the respondent's disbarment or suspension and consequent disqualification to act as a lawyer after the effective date of such discipline or transfer to disability inactive status;

(e) Within fifteen days file with the court, agency, or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties;

(f) Keep and maintain records of the steps taken to accomplish the foregoing; and

(g) Within thirty days file proof with this court and with the committee on professional ethics and conduct of complete performance of the foregoing, and this shall be a condition for application for readmission to practice.

Court Rule 118.19. Immunity. Complaints submitted to the grievance commission, or to the committee on professional ethics and conduct, or testimony with respect thereto shall be privileged and no lawsuit predicated thereon may be instituted.

Members of the grievance commission, members of the committee on professional ethics and conduct, and

their respective staffs shall be immune from suit for any conduct in the course of their official duties.

A true copy of any complaint against a member of the grievance commission or the committee on professional ethics and conduct involving alleged violations of an attorney's oath of office or of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States or state of Iowa shall be promptly forwarded to the chief justice of this court.

Court Rule 118.20. Reports. The chairperson of the grievance commission and the chairperson of the committee on professional ethics and conduct shall, on July 1 of each year, submit to this court a report of the number of complaints received and processed during the prior period, a synopsis of each such complaint, and the disposition thereof. The name of the attorney charged and the name of the complainant shall be omitted, but a synopsis of the charges made and a report of disposition shall be included.

Referred to in Ct.R. 118.9; R.Prob.P 5 *"d"*

Court Rule 118.21. Effective dates. These rules shall have prospective and retrospective application to all alleged violations, complaints, hearings, and dispositions thereof on which a hearing has not actually been commenced before the grievance commission prior to the effective date of these rules.

Court Rule 118.22. Costs. In the event that an order of revocation, suspension, or public reprimand results from formal charges of misconduct, the court shall assess

against the respondent attorney the costs of the proceeding. For the purposes of this rule costs shall include those expenses normally taxed as costs in state civil actions pursuant to the provisions of Iowa Code chapter 625.

If there is no appeal from the report and recommendation of the grievance commission, the complainant shall file a bill of costs with the clerk of the supreme court within twenty days of the filing of said commission report. If there is an appeal, the complainant shall file such bill of costs with the clerk of the supreme court simultaneously with the filing of the complainant's last appellate brief.

Concurrently with the filing of the final decision of the supreme court, the court shall order restitution paid by the respondent to the complainant of such costs as the court may approve. No suspended or disbarred attorney may file application for reinstatement or readmission until the amount of such restitution for costs assessed under this rule has been fully paid, or waived by the supreme court.

[Court Order June 10, 1964; October 8, 1970; November 8, 1974; 118.10 January 15, 1975; 118.12, 118.14 and 118.16 November 21, 1977; 118.12 January 15, 1979; 118.1, 118.2 and 118.7 July 30, 1981; 118.16 and 118.16A March 30, 1982; 118.16A May 19, 1982; August 27, 1982 (amendment to rule 118.7 to clarify, not change, the meaning); 118.2 October 20, 1982; February 9, 1983; 118.6 March 15, 1983; 118.3 June 15, 1983; 118.1 June 24, 1983; 118.10 and 118.11 July 18, 1983; 118.9 July 17, 1984; 118.9 September 26, 1984, effective October 10, 1984; 118.7 September 27, 1984, effective October 10, 1984; 118.16 November 14,

1984, effective November 26, 1984; 118.12, 118.14, 118.16 April 25, 1985; 118.10 July 1, 1985; 118.9 October 25, 1985, effective November 1, 1985; 118.12 October 25, 1985, effective November 1, 1985; 118.2 January 22, 1986, effective February 3, 1986; 118.22 September 15, 1986, effective October 1, 1986; 118.19 July 31, 1987, effective September 1, 1987; 118.11 August 14, 1987, and Nunc Pro Tunc August 24, 1987, effective September 1, 1987; 118.20 October 16, 1987, effective December 1, 1987]

November 1981

GRIEVANCE COMMISSION RULES

RULES OF THE GRIEVANCE COMMISSION OF THE SUPREME COURT OF IOWA

[Adopted by Supreme Court Order June 23, 1975]

The following shall be the rules of the grievance commission of the supreme court of Iowa:

1. The grievance commission of the supreme court of Iowa is hereafter referred to as the commission, and the members thereof are referred to as the commissioners. The commissioners shall elect from their members one to serve as chairman and one as vice chairman and shall appoint a clerk and assistant clerk who shall serve as secretary and assistant secretary of the commission. In the absence or inability to act, of the chairman, the vice chairman shall perform all duties of the chairman.

2. The commissioners may act as a body or in such divisions as the chairman may direct. Until otherwise directed the commission shall consist of four divisions designated first, second, third and fourth, and each division shall consist of five members. The personnel of each

division shall be selected and designated by the chairman for each complaint as required. He shall appoint one of said members to serve as president of said division. One additional member shall be selected as an alternate.

3. All complaints made in accordance with court rule 118 shall be filed with the secretary, who shall refer the same to the committee on professional ethics and conduct, hereafter referred to as the committee.

4. Any complaint filed by the committee shall be filed in the name of the committee as complainant and against the attorney named in said charges as respondent. Thereafter such complaint and charges referred to therein shall be prosecuted by said committee before the commission until final disposition thereof.

5. The secretary shall cause each such complaint to be separately numbered and filed and all subsequent motions, pleadings, orders or other documents relating thereto shall be made part of such file. The secretary shall also provide for a permanent docket to be kept as required by court rule 118.5. All complaints filed by or on behalf of the committee shall be docketed therein and such file and docket shall be kept in substantially the same manner as the records relating to civil action in district court.

6. The secretary shall report the filing of each such complaint to the chairman of the commission, who shall thereupon by written order filed in the cause direct that the same be heard by the commission as a whole or specified division thereof.

7. Upon the filing of such complaint, the secretary shall also cause a written notice thereof with a copy of said complaint, a copy of court rule 118, and a copy of these rules attached to be served upon the respondent by personal service in the manner of an original notice in civil suits or by restricted certified mail. Said notice shall also notify said respondent to file a written answer to said complaint within fifteen days after completed service of said notice. Written return of service shall be made by the person making the service if by personal service, or by the secretary with postal receipts attached if by restricted certified mail, and such return of service shall be filed in the cause. Service shall be deemed complete on the date of personal service or date shown by the postal receipt of delivery of said notice to the respondent. Said notice shall be deemed sufficient if substantially in the form set out in Appendix "A", made a part hereof. [Amendment approved by Court Order November 20, 1981]

8. The respondent shall file a written answer to such complaint within fifteen days from the completed service of said notice. If he fails or refuses to file such answer within the time specified, the allegations of said complaint shall be considered denied and the commission or a division thereof may proceed as if a formal denial were filed.

9. The chairman of the commission or the president of any division thereof to which a complaint has been referred, shall direct a hearing to be held upon such complaint within a reasonable time, in the county of respondent's residence or at the discretion of the chairman within any other judicial district as shall most nearly

serve the convenience of the parties, and shall designate by written order the time and place for such hearing and the personnel of the commission or division. The secretary shall mail a copy of said order to all parties and attorneys at least ten days before the date set for said hearing. If the respondent files written objections to the hearing of said complaint in the county of his residence, the hearing shall be held at such other place as the chairman or division president shall direct by written order in which case a new notice shall be given as above prescribed.

10. No hearing shall be continued except for good cause. Except in case of emergency, any motion for continuance shall be filed at least seven days before the day of hearing. Any objections to continuance shall be filed promptly thereafter.

11. The chairman of the commission or president or any member of a division to which a complaint has been referred, or any attorney against whom a complaint has been filed, may request the clerk of the district court of the county in which any disciplinary hearing is held to issue subpoenas of every kind in all matters pending before the commission or division thereof and the clerk shall issue same. Any member of the grievance commission is hereby empowered to administer oaths to all witnesses and shall cause such testimony to be officially reported by a court reporter.

12. All answers, motions, applications, petitions, and pleadings in connection with a complaint shall be filed in duplicate with the secretary at his office in Des Moines, Iowa, and the secretary shall prepare and mail

copies thereof to the respondent, the chairman of the committee, attorneys of record, and to the chairman of the commission if sitting as a whole, or to the president of a division thereof to whom such complaint has been referred; provided, however, that on and after the day fixed for hearing any such papers may be filed in duplicate with the chairman of the commission or the president of the division, as the case may be, who shall notify all parties and attorneys of the filing thereof and a copy shall be filed with the secretary.

13. If prompt written request is filed by or on behalf of any party for a hearing upon any preliminary motion or application filed in connection with a complaint, the chairman of the commission sitting as a whole or the president of the division to whom such complaint has been referred shall by written order fix a time and place of hearing upon such motion or application and shall notify all parties and attorneys. After such hearing or if none is requested, such chairman or president of a division as the case may be, or any member of the commission or division designated by such chairman or president, shall file his written ruling upon such motion or application and thereafter all parties shall promptly comply with the terms and conditions thereof.

14. The respondent may challenge the impartiality of any member of the commission or division by motion setting forth the grounds therefor and filed within the time allowed for filing answer to the complaint. Said motion shall be disposed of as provided in rule 13 and if the challenge is sustained the vacancy thus created shall be filled as provided in rule 17.

With the consent of the complainant and the respondent, a division of the grievance commission may consist of four members. In the event the four-member division is evenly divided between a recommendation of sanction and dismissal, the division shall enter a dismissal of the complaint pursuant to the provisions of court rule 118.9. Upon such dismissal the complainant may apply for permission to appeal pursuant to court rule 118.11.

15. At the time and place fixed for the hearing upon any complaint, the commission or division thereof shall proceed to hear the evidence, briefs of authorities and arguments in connection therewith. The hearing shall be private unless a written request for a public hearing is filed by the respondent. All witnesses shall be sworn by a person authorized by law to adminster oaths or any member of the grievance commission and their testimony shall be taken in writing by a duly qualified reporter. The rules governing procedures and the order and admissibility of evidence in causes tried in district court without a jury shall be adhered to as nearly as practicable. All questions of procedure, including objections to evidence, shall be determined by the chairman of the commission or president of the division, as the case may be.

16. At the conclusion of a hearing upon any complaint against an attorney before such commissioners, the commissioners are empowered to dismiss such complaint or to reprimand the accused, and in the event of such reprimand, the commissioners shall promptly file their report of such action with the clerk of the supreme court, or if action by the supreme court of suspension or revocation of the license of such attorney to practice in the courts of this state is recommended, the commissioners

shall make a report to the supreme court of their recommendations and conclusions of fact and law concerning the complaint, answer and proof within a reasonable time of the date of the last responsive brief and argument and thereupon such matters shall stand for consideration and disposition in the supreme court. Any member of the commission has the right to file with the supreme court his or her dissent from the majority determination or report.

The secretary shall promptly cause a copy of any such report to be served on the respondent in the manner prescribed by rule 30 of the Iowa rules of appellate procedure. Such report of the commissioners shall be filed with the supreme court, together with proof of service of a copy thereof upon the respondent, as provided by rule 30 of the Iowa rules of appellate procedure.

If the charges are dismissed by the commissioners, no publicity shall be given to any of the proceedings except at the request of the respondent. All reports and recommendations of the commissioners shall be concurred in by at least three members of the division or at least twelve members of the commission as the case may be, all of whom shall have been present throughout the proceedings. [Amendment approved by Court Order December 10, 1982; July 18, 1983]

17. In case of the absence or inability of the chairman and vice chairman of the commission sitting as a whole to perform any of the duties provided for herein, said commission may designate some other member to perform such duties as acting chairman. In case of the absence or inability of the president of a division to

perform any of the duties provided for herein, said division may designate some other member thereof as acting president to perform such duties. If a vacancy occur in any division from any cause, the same shall be filled by the chairman, vice chairman or acting chairman of the commission.

18. No omission, irregularity or other defect in procedure shall render void or ineffective any act of the commission or a division or any member thereof unless substantial prejudice is shown to have resulted therefrom.

APPENDIX "A"

BEFORE THE GRIEVANCE COMMISSION OF THE SUPREME COURT OF IOWA

Committee on Professional Ethics and Conduct of The Iowa State Bar Association,	)	
Complainant,	)	NOTICE OF COMPLAINT
vs.	)	
John Doe, Attorney at Law, of ___, Iowa,	)	
Respondent.	)	

To John Doe,

Respondent above named:

You are hereby notified that there is now on file with the Secretary of the Grievance Commission of the Supreme Court of Iowa at his office at 1101 Fleming Building in the City of Des Moines, Iowa, a complaint alleging that you have committed unethical practices as an attorney and counselor at law as described therein.

A copy of said complaint, a copy of Court Rule 118, and a copy of the rules of said commission relating to hearing said complaint are attached hereto and made a part of this notice.

You are further notified to file your written answer to said complaint within fifteen days from the completed service of this notice and to abide by the further orders of said commission made in accordance with said rules.

You are further notified that said commission will hear said complaint in accordance with said rules and will take such action thereon as may be warranted by the facts and circumstances disclosed at the hearing thereon.

Dated this ___ day of ___, 19___.

Secretary of the Grievance
Commission
1101 Fleming Building
Des Moines, Iowa 50309

[Court Order June 23, 1975; November 20, 1981; June 25, 1987, effective August 3, 1987]

RULES OF PROCEDURE OF THE COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSOCIATION

1.1. Complaints. Complaint forms shall be available to the public from the secretary of the Iowa State Bar Association, the chairperson of the committee, or the chairperson's designee. [Court Order December 12, 1974; October 30, 1985, effective November 1, 1985]

1.2. Filing. Complaints shall be accepted from any person, firm or other entity believing that an Iowa lawyer has been guilty of a disciplinary infraction.

a. Complaint must be sworn to, except when filed by an officer of the court.

b. Complaints shall include whatever exhibits complainant desires to submit.

c. They shall be filed, without charge, with the secretary of the Iowa State Bar Association.

d. The committee may, upon its own motion, initiate any investigation or disciplinary action. [Court Order December 12, 1974; June 20, 1980]

2.1. Secretary's procedure. Upon receiving a complaint in proper form as provided in section 1 hereof, the secretary of the Iowa State Bar Association, or the secretary's designee, shall:

a. Make a card record indicating the date filed, name and address of complainant, name and address of respondent lawyer, with a brief statement of the charges made. This card ultimately also shall show the final disposition of the matter when it is completed.

b. Forward the original and a duplicate for each lawyer charged in such complaint to the chairperson of the committee, or the chairperson's designee.

c. The secretary, or the secretary's designee, shall keep all files in permanent form and confidential, unless otherwise provided or directed in writing by the chairperson of the committee, or the chairperson's designee, for disciplinary purposes or by a specific rule of the supreme court of Iowa. All such files shall be available for examination and for reproduction therefrom, by the designated officer or agent of the client security and attorney disciplinary commission, pursuant to proceedings under supreme court rule 121.

d. Any such files, except for the work product of staff counsel, investigators, or administrators of the committee, shall be open to the inspection of the lawyer complained against. [Court Order December 12, 1974; November 2, 1981; October 30, 1985, effective November 1, 1985]

3.1. Committee procedure. Upon receipt of any complaint the chairperson of the committee, or the chairperson's designee, shall notify the complainant in writing that the complaint has been received and will be acted upon. [Court Order December 12, 1974; October 30, 1985, effective November 1, 1985]

3.2. The chairperson, or the chairperson's designee, shall forward to the respondent by restricted certified mail, marked "Confidential", or by personal service in the manner of an original notice in civil suits, a copy of the complaint, requesting a written response thereto, and copies of the committee rules and of supreme court rule

118. [Court Order December 12, 1974; May 13, 1983; October 30, 1985, effective November 1, 1985]

3.3. If after twenty days, no such response has been received, the respondent shall be notified by restricted certified mail that unless a response is made within ten days from receipt of notice, the committee may file a complaint with the grievance commission for failure to respond, and concerning all or any portion of the matter about which the original complaint was made. [Court Order December 12, 1974; November 16, 1984, effective November 26, 1984]

3.4. Upon receipt of response the committee shall:

a. Dismiss the complaint, and so notify complainant and respondent in writing, or

b. Cause the case to be docketed for consideration of the committee at its next hearing-meeting, or

c. Arrange for investigation of the complaint either by a member of the young lawyers section of the Iowa State Bar Association, the committee counsel, or another person, whichever in the judgment of the chairperson, or the chairperson's designee, is appropriate. [Court Order December 12, 1974; October 30, 1985 effective November 1, 1985]

3.5. When the report and recommendation of investigator is returned to the committee, which shall be within a reasonable time, the committee shall:

a. Dismiss the complaint, and so notify complainant and respondent, or

b. Cause the case to be docketed for consideration of the committee at its next hearing-meeting. [Court Order December 12, 1974]

3.6. If either witnesses or the respondent or complainant or any of them is required to give testimony before the committee, such person or persons shall be given at least seven days' written notice in advance of the hearing-meeting at which they are requested to attend and testify. [Court Order December 12, 1974]

4.1. Hearing-meetings. Hearing-meetings shall be held quarterly, as nearly as possible. A majority of the committee shall constitute a quorum. The chairperson, or the chairperson's designee, shall see to the preparation of a record of such meetings which shall become a part of the permanent files of the Iowa State Bar Association. Any evidence taken shall be under oath and may be made of record. Upon completion of the consideration of any matter before the committee, the members, by majority vote of those present shall:

a. Continue the matter, if necessary, for appropriate reasons or purposes; or

b. Dismiss the complaint; or

c. Admonish the lawyer who shall be notified in writing that he or she has thirty days from the date of mailing thereof to file exceptions with the administrator of the committee, who shall then refer the admonition to the committee, which may dismiss, admonish, reprimand, or file formal complaint with the grievance commission; or

d. Reprimand the lawyer or lawyers involved; or

e. As complainant, file a complaint before the grievance commission of the supreme court of Iowa, and thereafter shall:

(1) In cases of dismissal, so notify complainant and respondent; or

(2) In cases of admonition, notify complainant of the committee's opinion concerning the matter and its communication with the lawyer involved; or

(3) In cases where a complaint is filed before the grievance commission, prosecute said complaint to final determination. [Court Order December 12, 1974; October 20, 1982; February 9, 1983; October 30, 1985, effective November 1, 1985]

5.1. Any member of the bar desiring to expand the information authorized for disclosure pursuant to the provisions of DR 2-101 or DR 2-105, Iowa Code of Professional Responsibility for Lawyers, or to provide for its dissemination through forums other than therein authorized or otherwise to change those rules, may apply to the committee. Such application shall be made in writing by restricted certified mail, and shall include such documentation as the applicant deems appropriate. The committee thereafter shall determine, on the basis of documentation at hand, further investigation, or whatever hearings it deems to be necessary, whether all or any part of the proposal is necessary in the light of existing provisions of the code, accords with the standard of accuracy, reliability, and truthfulness, and would facilitate the process of informed selection of lawyers by potential consumers of legal services. [Court Order May 18, 1978]

5.2. If the committee is of the opinion that no relief should be granted in response to any such application and no changes are necessary, it shall make a determination to that effect and then shall proceed as provided hereinafter. [Court Order May 18, 1978]

5.3. If the committee concludes that relief should be granted in response to such application, it shall make its determination to that effect and submit the same to the supreme court by filing the same with the clerk of the court as a recommended amendment to the Iowa Code of Professional Responsibility for Lawyers, universally applicable to all lawyers admitted to practice in Iowa. [Court Order May 18, 1978]

5.4. Within ten days after the committee has made its determination under paragraphs 5.1 and 5.2 hereinabove, it shall notify applicant of its determination by furnishing said applicant a copy thereof by restricted certified mail. Applicant shall have thirty days from the date of the said mailing by the committee to the applicant to take exception to all or any part of the determination of the committee. Said exceptions shall be taken by filing with the committee within said thirty-day period, complete written notice and documentation of the exceptions and the reasons therefor, which shall be forwarded to the committee by restricted certified mail. [Court Order May 18, 1978]

5.5. Within thirty days from the receipt of the exceptions, the committee shall file with the clerk of the court a copy of said exceptions and documentations attached thereto, together with any written response which the committee seeks to make to the court together

with a certification of its mailing to the applicant a copy of its response to the exceptions, in order that the court may determine the whole matter, with or without hearing, as to the court may appear appropriate and desirable. [Court Order May 18, 1978]

5.6. Nothing herein contained shall permit any publication other than provided in DR 2-101 or DR 2-105 unless and until said DR 2-101 or DR 2-105 shall be amended by the court. No applicant for expanded information for disclosure or other publication under the said rules shall make such disclosure or publication until the same specifically has been approved by rule of the court. [Court Order May 18, 1978]

6.1. Upon written request from an officer of the Iowa court, the committee by majority vote may, if it deems appropriate, issue formal advisory opinions as to the propriety of proposed actions by members of the bar in their practice under the Iowa Code of Professional Responsibility for Lawyers. Such formal advisory opinions shall be effective unless and until modified in any way by decision of the supreme court, by amendment of the Iowa Code of Professional Responsibility for Lawyers, or by a superseding formal advisory opinion. [Court Order October 30, 1985, effective November 1, 1985]

6.2. Such formal advisory opinions issued by the committee shall be in writing and catalogued annually, as nearly as possible, and shall be available for distribution at the committee's office to members of the bar upon written request. [Court Order October 30, 1985, effective November 1, 1985]